for The Defense

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The Training Newsletter for the Maricopa County Public Defender's Office ⋈ Dean Trebesch, Maricopa County Public Defender

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Barriers to Representation

Northern Arizona Public Defender seminar explores barriers to representation in two-day seminar.

by Christopher Johns

FLAGSTAFF--"No matter how skilled you are as a lawyer, you do your clients a disservice if you don't understand the cultural bias of where the client lives," said criminal defense lawyer Anthony Griffin of Galveston, Texas. "Racism and bias permeate the criminal justice system and must be dealt with in and out of the courtroom."

Griffin was the keynote speaker for the Northern Arizona Public Defender's Annual Seminar, sponsored by the Navajo, Mohave, Coconino and La Paz County Public Defenders' Offices. The two-day seminar held in Flagstaff on May 5 and 6 (amidst May snow flurries) explored issues that arise in representing minorities.

The two-hour, never-a-dull-moment presentation by Griffin was a seminar highlight. His talk on representing the "vilified client" came from personal experience. Griffin, who is black, is a Texas ACLU panel lawyer and NAACP general counsel who agreed to represent Michael Lowe, Grand Dragon of the Knights of the Ku Klux Klan Realm of Texas. His representation arose out of Texas's attempt to obtain the Klan's membership list after other Klan members were suspected of using intimidation to maintain segregated public housing in Vidor, Texas. "The issue, of course, went beyond the Klan," according to Griffin. "I remember my history and attempts to obtain NAACP membership lists."

"Some people thought I'd lost my mind," Griffin deadpanned. Then in a high-pitched voice he yelled out, "But many thought I was just plain crazy and psychotic." He noted that most criminal defense lawyers understood how he could represent the Klan. "For the most part, you all understand. It's the public and non-lawyers who didn't get it."

Griffin stated, "I would be a hypocrite to say my role is to defend the Bill of Rights, but only for my friends."

Griffin noted that you know when you're really a defense lawyer when, after recognizing the human loss and suffering of the Oklahoma tragedy, you ask yourself, "How would I defend accused suspect Timothy McVeigh?"

But the barriers to representation were illustrated by his representation of east Texas blacks. "In that circumstance, my clients were literally used to not holding their heads up in court. I had to work with them to stand tall and look the system in the eye."

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Besides Griffin's talk on representing the vilified client, several panel discussions explored cultural issues that can be barriers to representation. There was a special emphasis on issues confronting representation of Native Americans. Percy Deal, of Navajo County Board of Supervisors, recounted to the audience his experiences of being forced to attend Indian boarding schools. "They would not let us speak our language," said Deal. "The message was that our culture was inferior to the white." Deal noted that in Navajo County, public defenders are faced with a language and cultural barrier that must be understood to provide effective representation.

Saturday's luncheon speaker, Navajo Nation Attorney General Herbert Yazzie, also stressed the historical effect that racism has played in the justice system. He related that the traditional Navajo justice system was much different from the Anglo.

"Among the Navajo," said Yazzie, "there is an emphasis on being a human being. Each situation must be looked at in the context of the relations of being human." Yazzie emphasized that the adversarial system is not the be-all and end-all of creating a just justice system. It involves more. "Natives are rational human beings who can work out their problems," said Yazzie, "but Arizonans make little effort to understand or recognize our sovereignty."

The Maricopa County Public Defender's Office will conduct a seminar on client relations and ethics that explores similar issues on June 9, 1995 at the Board of Supervisors' Auditorium in Phoenix. Featured speaker will be Cessie Alfonso, an M.S.W. from New Jersey who has spent years working with criminal defense lawyers on communication issues and "client-centered representation." A panel discussion will follow and the theme of barriers to representation will be discussed. Ω

for The Defense®

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for The Defense is the monthly training newsletter published by the Maricopa County Public Defender's Office, Dean Trebesch, Public Defender. ***for The Defense*** is published for the use of public defenders to convey information to enhance representation of our clients. Any opinions expressed are those of the authors and not necessarily representative of the Maricopa County Public Defender's Office. Articles and training information are welcome and must be submitted to the editor by the 10th of each month.

Legal Defender Office Begins Operation

by Bob Briney, Legal Defender

The Maricopa County Legal Defender's Office began operation on May 1, 1995. The new office was established to represent indigent defendants in cases where the Public Defender's Office has an ethical conflict of interest. In establishing the Legal Defender's Office, Maricopa County becomes the fifth county in Arizona to form an alternative office to represent indigent defendants. The new office is currently located in the south wing of the Luhrs Central Building, and will be moving to a new location in July.

The office was established by the Board of Supervisors to provide quality legal defense at a reduced cost. County Administrator David Smith has directed the office to handle all cases where in-house representation is beneficial to the county. In addition, the office will manage the Private Attorney Indigent Defense Program (PAID) and explore new programs to generate cost savings and increase efficiency.

Initially, the office will represent only defendants charged with major felonies. As defined by current court contracts, a major felony is a case where the defendant is charged with either first degree murder, or any other case where it is anticipated that more than one hundred hours of attorney time will be required. The county presently contracts with private attorneys for representation of defendants charged with major felonies. Major felonies cost the county approximately $12,500 per case (including the cost of investigators, expert witnesses, and attorney time), with a minimum cost of $8,000.

The office will maximize attorney efficiency by utilizing the latest computer technology and optimizing the use of support staff. Each attorney will have a personal computer, networked for immediate access to statutes, cases, and legal research tools such as Lexis, Westlaw, and the Public Defender Motion and Brief Bank. Additional features include E-mail to both the County Attorney's and Public Defender's Office, access to automated case tracking, and document preparation software.

The seven major felony attorneys will be supported by two investigators, a death penalty mitigation expert, a legal assistant, and appropriate secretarial support. Attorneys will focus entirely on case preparation and litigation. Whenever practicable, the "team" approach will be used for case development.

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By October 1, the office will hire six additional attorneys and appropriate support staff. Case assignments will be expanded to include non-major felonies in the three central Phoenix quadrants. It is anticipated that the expansion will continue and that the office will handle most felony conflict cases in FY 1995-96.

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May's RoUnD Up ThE USuaL SuSpEcts

"I am the law, and the law is not mocked."

--Inspector Javert from *Les Miserables*

Vouching

A recent courtroom foray forced revisitation of "prosecutorial vouching" in closing argument. Which kind of reminds me of the Richard Nixon quote: "In all my years of public life, I have never obstructed justice." The problem with vouching is that it isn't always easy to hear or see and distinguish when it is interwoven with facts from a case. Plus you're usually sitting there jotting down phrases to toss into your own argument that the prosecutor has turned, not to mention frantically trying to remember all you want to say. But at this point med school is probably no longer an option.

Example: A prosecutor's appeal to the jury to act as a "conscience of the community" is acceptable unless it is "specifically designed to inflame the jury." *United States v. Lester*, 749 F.2d 1288, 1301 (9th Cir. 1984). Yeah, that's helpful. Certainly, it is said with the intent to influence the jury. How do you know whether it will inflame the jury? You don't. So a quick run through the case law may not hurt before any trial since vouching, along with burden shifting, are probably the two most frequent, improper arguments served up by the state.

So what is vouching? As a general rule, a prosector may not express his opinion of the defendant's guilt or her belief in the credibility of government witnesses. *See United States v. McKoy*, 771 F.2d 1207, 1210-11 (9th Cir. 1985); *see also State v. Filipov*, 118 Ariz. 319, 576 P.2d 507 (1978). Along the same line, stating or implying a personal belief in a witness's statements or arguing that evidence not presented to the jury supports conviction is impermissible vouching. *See State v. McCall*, 139 Ariz. 147, 677 P.2d 920 (1983).

Generally, when you hear the word "I" or "me," it's time to start sitting up straight in your counsel chair. How about this: "Why would the police lie, it doesn't matter to them. They get paid one way or another." Vouching? I think so. Or what about "You can't call 10 or 12 [police officers] liars"? Maybe. What if only five officers testified although a dozen may have been involved in the investigation? How about "Finish the job that the [police] started"? That's vouching. The clear inference is that the police are telling the truth. "I believe them. You should believe them and convict."

Of course, if there is no objection, vouching will only cause a reversal on appeal if it rises to the level of plain error. *See United States v. Molina*, 934 F.2d 1440, 1444 (9th Cir. 1991). Some factors to think about when making a vouching objection and a mistrial motion would be: (l) what is the form of the vouching? (2) how much of the vouching implied that the prosecutor has extra-record knowledge of the witness's truthfulness? and (3) the importance of the testimony in the overall case. *See, e.g., United States v. Kerr*, 981 F.2d 1050, 1053-54 (9th Cir. 1992).

When the Good Guys Lie

"Come into my parlor," said the spider to the fly.

--Mary Howitt

If you've been following the Susan Smith case, you may have caught the recent story about her lawyer challenging her confession on the grounds that the police deceived her into believing they had more evidence against her than they did. In other words, the police lied.

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The use of deception during interrogations is a fertile area to explore before trial, not only for the suppression issues--but it's obvious cross-examination value.

We all know that the reason for excluding admissions obtained from our clients by coercion is important because of their possible falsity. But the preclusion of overt coercion has caused police agencies to use more sophisticated interrogation techniques and deception in extracting statements from clients. That, in large part, seems to be the reason why police interrogations remain secretive and why there is such a resistance to recording and fully documenting them.

But there is hope. Although you wouldn't always know it, the U.S. Supreme Court has injected the idea of *fairness* into interrogation jurisprudence. That is the essence of *Miranda.* But how deceptive can police be? When does the interrogation become involuntary because of deceptive techniques?

Exaggerations usually permitted

Well, there's good and bad news. Once your client waives his *Miranda* rights, police may, for example, misrepresent (lie) about the seriousness of the offense. For example, they may tell a suspect that a murder victim is still alive. Exaggerations also have been upheld. And the classic misdirection seems to also be permissible. *See, e.g., Colorado v. Spring,* 107 S.Ct. 851 (1987). Likewise, misrepresentation of the moral seriousness of the crime is a typical technique advocated by Inbau, Reid, and Buckley. They wrote the "bible" on criminal confessions and their text is the basis for most training on interrogations. In any serious confession case, a copy of their book, *Criminal Interrogations and Confessions* (1986), is probably indispensable. There is plenty of fertile stuff in there for cross-examination of the interrogators.

Misrepresentation and conscience manipulation "okay" unless crosses into coerciveness.

Courts have also upheld the proverbial "Mutt and Jeff" routine. You know, where the police play the good-guy/bad-guy roles. But this routine goes too far when the police use role-playing or manipulation to appeal to the conscience of the suspect so that it becomes coercive, for example, when an officer implies that God will punish the suspect for not confessing. *See, e.g., People v. Adams,* 143 Cal. App.3d 970 (1983).

Promise anything?

Are promises permitted? Well, sort of--but maybe not. Sorry, I can't do much better than that. But keep in mind that promises of leniency are basically presumed to be coercive. But vague and indefinite promises seem to get by. Bad-guy syndrome?

What's important is the specificity--or at least that's what the case law seems to suggest. In *Miller v. Fenton,* 796 F.2d 598 (1986), for example, a suspect was told that he needed psychological treatment instead of punishment--hence an implicit promise of leniency. But the court upheld the resulting confession.

The switch

Let's see, would a police officer ever pretend to be someone else to extract a confession? Yep. In one case, for example, the suspect was taken to a doctor because of a sinus condition. The doctor was really a police psychiatrist who told the suspect that he hadn't done anything wrong and if he talked, he would be let off easy. Okay? Nope. Likewise, police can't pretend to be the accused's lawyer or a priest.

A police officer planted in a prison, however, was okay according to the U.S. Supremes--ostensibly, because the suspect confessed to another crime unrelated to the one for which he was in custody. Nullifying, for the Supremes, *Miranda* and *Massiah* concerns.

True or false: using false evidence

May the police fabricate evidence? Yes, depending on how far they go. Usually this takes the form of statements alleged to be made by a co-defendant, claiming that fingerprints or other physical evidence exists, and the famous fake eyewitness test. Even giving a suspect a lie detector test has been approved--even if the suspect passes!

But actually creating physical evidence has been excluded in at least one case. When police created a false report showing that the defendant's DNA was found at the scene and they displayed it to a suspect (with mental problems), that went too far. Especially, because the false evidence could actually have been used (the police used stationery from Life Codes, Inc., a real company that does DNA analysis).

The problem for the practitioner, of course, is first getting the information necessary to substantiate deceptive tactics. But a larger question should also be posed to the courts. As more and more commentators favor "truth in the criminal justice system," maybe it should start with the police. The long-term effect of legal lying by police may do more to undermine justice than we think. With one estimate of over 6000 false confessions annually, it is no small problem. Ω

FELONY DUI: The Old and the New

By Gary Kula

On April 19, Governor Symington signed and approved Senate Bill 1017. One of the most significant provisions in this Bill is the creation of a new Felony DUI offense. The text of this new offense is as follows:

> A.R.S. §28-698. DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS WHILE MINOR PRESENT; VIOLATION; CLASSIFICATION
>
> A. A person is guilty of driving or being in actual physical control of a vehicle while a minor is present if the person commits a violation of §28-692 while a person who is 15 years of age or under is in the vehicle.
>
> B. A violation of subsection A is a class 6 felony.

This new law goes into effect on July 13, 1995.

The following outline is a summary of some of the issues to be considered in evaluating a felony DUI case.

I. DUI WHILE DRIVER'S LICENSE OR PRIVILEGE TO DRIVE SUSPENDED, CANCELED, REVOKED, REFUSED OR RESTRICTED

ELEMENTS:

- DUI
- While license or privilege to drive is suspended, canceled, revoked, refused or restricted.

A. Driving While License Suspended, Canceled, Revoked, Refused or Restricted.

1. Statutory Provisions

a. As of July 17, 1994, a DUI may be charged as a felony if it is committed while the person's driver's license or privilege to drive is restricted as a result of violating §28-692 or under §28-694. Prior to July 17, 1994, the state was required to prove that the person was driving in violation of a restriction placed on their license/privilege pursuant to §28-692 or §28-694.

b. A.R.S. §28-697(K). For purposes of the felony DUI statute, suspension, cancellation, revocation or refusal means any suspension, cancellation, revocation or refusal.

c. A.R.S. §28-453 provides that service of notice is complete upon mailing. Such notice shall be sent by mail to the address provided to MVD on the licensee's application or pursuant to A.R.S. §28-427 (requirement for notifying MVD of change of name or address). If no address has been provided in this manner, the notice shall be sent to any address known to the department, including the address listed on any traffic citation actually received by the department.

d. Interstate Compact Act. Arizona is a member state of the Interstate Compact Act. Pursuant to the provisions of this act, which can be found in A.R.S. §28-1601 et. seq., a person may apply for a driver's license in another state once the period of suspension has terminated in their home state. Additionally, if the person's driving privileges are revoked in their home state, they may apply for a driver's license in another state one year following the termination of revocation.

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e. A.R.S. §28-445(B). This statutory notice provision merely creates a presumption of notice and does not eliminate the state's burden of proving that the defendant knew or should have known the status of his license/privilege.

f. A.R.S. §28-476, repealed 7-17-93. This statutory provision had applied the licensing provisions (i.e., A.R.S. §28-470 et seq) to the operation of motor vehicles anywhere in the state (including private property).

2. Relevant Case Law

a. *State v. Williams*, 144 Ariz. 487, 698 P.2d 732 (Ariz. 1985) held that the offense of driving without a license necessarily includes a culpable mental state so that in order to convict the person of the offense, the state must show that the driver knew or should have known the status of his license.

b. *State v. Jennings*, 150 Ariz. 90, 722 P.2d 258 (Ariz. 1986), ruled that the statutory notice provisions create a presumption that if the notice was mailed, it was received by the driver and the driver has knowledge of the status of his license. In order to rebut the presumption, the driver may show that he did not receive the notice. The statutory notice provisions do not create a strict liability offense as to the status of a driver's license or driving privileges.

c. *State v. Agee*, 170 AAR 62, 887 P.2d 588 (App. Div. I, 1994), review denied. The statutory notice provision of A.R.S. §28-445(B) is merely a presumption and does not eliminate the mental state requirement that the state prove that the defendant knew or should have known that his license was suspended. The jury must be instructed on the "knowledge" element of the crime of driving on a suspended license.

d. *State v. Wilkinson*, 163 Ariz. 298, 787 P.2d 1094 (App. 1989) reconsideration granted, review denied. In *Wilkinson*, a valid out-of-state license was not a defense where it was issued by another state in violation of the interstate compact (i.e., D.L. issued prior to termination of suspension in home state and applicant misrepresented that his license was ever suspended).

e. *State v. Church*, 175 Ariz. 104, 854 P.2d 137 (App., 1993). The statutory presumption that service of notice of suspension or revocation is complete upon mailing does not violate due process.

f. *State v. Stidham*, 164 Ariz. 145, 791 P.2d 671 (Ariz. App. 1990). After a driver's license is revoked by the state, it remains revoked until the licensee makes an application for a new license, and a new license has been issued.

g. *State v. Rivera*, 177 Ariz. 476, 868 P.2d 1059 (App. 1994) in an aggravated DUI case, a defendant is not entitled to a directed verdict on the issue of revocation where:

(1) The defendant obtained a new license through false information on his application.

(2) The defendant's driving privileges were still under the original order of revocation.

h. *State v. Villa*, 159 AAR 22, 880 P.2d 706 (App. 1994). The Corpus Delicti Rule does not require the state to present independent evidence as to the status of the defendant's driver's license/driving privileges before admitting evidence of the

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defendant's admissions as to the status of his license/privilege. For the defendant's statements and/or admissions to be admissible, the state must only present sufficient evidence as to the underlying DUI offense.

i. *State v. Ekmanis*, 166 AAR 28, 885 P.2d 117 (App. 1994). Surrender of chauffeur's license on a prior DUI did not entitle the defendant to continue driving on his regular license. Suspension notice from the prior DUI was sufficient to put him on notice that all driving privileges had been suspended.

3. Trial Issues.

a. Bifurcation Not Required. In *State ex re Romley v. Superior Court (Begody, Real Party in Interest)* 171, Ariz. 468, 831 P.2d 844 Ariz. App. 1992, the court of appeals ruled that the status of the license or the driving privileges (i.e., suspended, canceled, revoked, refused or restricted) is an element of the felony DUI offense and the defendant is not entitled to a bifurcated trial.

b. *State v. Rebollosa*, 177 Ariz. 399, 868 P.2d 982 (App. Div. 1, 1993) review denied. Evidence of suspension, either through a stipulation or the presentation of evidence, must not be kept from the jury as it is an element of the felony DUI offense.

c. MVD Records, if admitted into evidence, must have all irrelevant and prejudicial information (page numbers, remedial measures, moving and insurance violations, and prior DUI's) redacted.

d. If "notice" or "knowledge" are at issue and all notices mailed by MVD could not be delivered (e.g., old or bad address), check to see if MVD was "notified" of the defendant's current address by either traffic citations or court abstracts forwarded to MVD. (See A.R.S. §28-453)

e. If a person has lawfully obtained a license in another state under the Interstate Compact Act, Arizona must honor and give full accord to the license. (See A.R.S. §28-1601 et seq.) (However, also see *State v. Wilkinson, supra.*)

f. It is a defense to the aggravated DUI charge that the offense occurred on private property. It is not necessary to have a valid driver's license or driving privileges in order to operate a motor vehicle on private property. It is a defense to the mental state component of this charge that a person driving on private property does not need a valid license or valid driving privileges.

g. The notice provisions of A.R.S. §28-453 merely create a presumption which may be rebutted by testimony and evidence that the defendant did not know and/or should not have known that his license or privilege to drive was suspended, canceled, revoked, refused or restricted.

II. DUI WITH TWO PRIOR DUI CONVICTIONS WITHIN FIVE YEARS

A. DUI

B. Two or more prior DUI convictions within five years

1. Statutory Provisions

a. A.R.S. §28-697(B). The date of the commission of the offenses, not the date of convictions, is determinative in applying the 60-month provision. The sequence in

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which the offenses were committed is not determinative.

b. A.R.S. §28-697(A)(2). The prior convictions may be acts committed in another state which if committed in this state would be a violation of section 28-692 or section 28-697.

2. Essential Elements of Prior Convictions

a. Proof of prior conviction.

(1) *State v. Lee*, 114 Ariz. 101, 559 P.2d 657 (1976). The court cannot take judicial notice of its own records to establish the existence of a prior conviction.

(2) *State v. Lopez*, 120 Ariz. 118, 487 P.2d 1184 (1978). A conviction occurs at the time that judgment is entered, which in Arizona, is at the time of sentencing. 17 A.R.S. Ariz. R. Crim. P. Rule 26.19a) and Rule 26.2(b).

(3) A certified copy of the conviction must be entered to evidence by the state. *State v. Hauss*, 140 Ariz. 230, 681 P.2d 382 (1984), *State v. Lee, supra*. Non-documenting evidence may be offered by the state in lieu of documentary evidence only if the state can show that its earnest and diligent efforts to obtain documentary evidence were unsuccessful for reasons beyond its control. Such non-documentary evidence must be highly reliable.

(4) Documentary evidence of prior conviction

(a) certified copy of court's minute entry *State v. Briscoe*, 112 Ariz. 98, 537 P.2d 968 (1975).

(b) certified copy of the judgment of guilt and sentencing. *State v. Stone*, 122 Ariz. 304, 594 P.2d 558 (Ct. App. 1975).

(c) certified copy of MVD record. *State v. Corrales*, 135 Ariz. 105, 659 P.2d 658 (1983).

(d) certified copy of state prison fingerprint card. *State v. Black*, 16 Ariz. App. 587, 494 P.2d 1332 (1972).

b. Proof of representation or waiver

(1) The state must affirmatively prove that the defendant was represented by an attorney, or had waived his right to counsel, on the prior conviction. *State v. Dean*, 8 Ariz. App. 508, 447 P.2d 890 (Ariz. App. 1968), *Burgett v. Texas*, 389 U.S. 109 (1967).

(2) If the defendant was not represented by counsel at sentencing but was represented at the trial on the prior, the conviction may be used to enhance punishment, since lack of counsel at sentencing invalidates only the sentence, not the conviction. *State v. Russell*, 108 Ariz. 549, 503 P.2d 377 (1972), *State v. Sample*, 107 Ariz. 407, 489 P.2d 44 (1971).

c. Proof of identity

(1) *State v. Jones*, 103 Ariz. 580, 447 P.2d 554 (1968). Mere similarity of names between the defendant and the name on the prior judgment is, by

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itself, insufficient to prove the prior. Name similarity plus photos may be sufficient.

(2) *State v. Norgard*, 6 Ariz. App. 36, 429 P.2d 554 (1968). State may use "any reasonable source of evidence" to prove identity. Similarity of name plus photo and fingerprints were sufficient to establish identity in *Norgard*.

d. Collateral attack of prior

(1) *State ex rel. Collins v. Superior Court in and for Maricopa County*, 754 P.2d 1346, 157 Ariz. 71 (1988).

(2) *State ex rel. Dean v. City Court of City of Tucson*, 161 Ariz. 414, 778 P.2d 1310 (Ariz. App. 1989).

3. Trial Issues

a. Bifurcation. In *State of Arizona v. Superior Court (Walker, real party in interest)*, 176 Ariz. 614, 863 P.2d 906 (Ariz. App. 1993), the court ruled that the two prior DUI convictions are elements of the offense of aggravated DUI and accordingly, the defendant is not entitled to a bifurcated trial.

b. Jury Instruction:

Evidence of prior convictions for the offense of Driving While Under the Influence has been admitted into evidence in this case. The sole purpose of this evidence is to establish a requisite element of the current offense. Such evidence may not be considered by you to prove or show that the defendant committed, or is more likely to have committed, the offense with which he is now charged. You must not think the defendant is guilty of this charge just because he may have been convicted of a similar offense on previous occasions.

III. RECENT SENTENCING ISSUES

A. *State v. Pitts*, 178 Ariz. 59, 870 P.2d 1155 (App. Div. 1, 1993) review granted, decision vacated in part 874 P.2d 962. Prior misdemeanor DUI convictions may be used as aggravating factors in sentencing for a felony DUI where the status of the defendant's license (i.e., suspended, canceled, revoked, refused or restricted) is the basis for the felony charge.

B. *State v. Mathieu*, 165 Ariz. 20, 795 P.2d 1303 (App. 1990). Defendant sentenced to mandatory prison term as a condition of probation is statutorily entitled to credit against that term for time spent in presentence incarceration. (A.R.S. §13-709(B)). However, see *Schumann*.

C. *State v. Schumann*, 173 Ariz. 642, 845 P.2d 1137 (App. 1993). In sentencing on a felony DUI case, the court has discretion to credit the defendant with presentence incarceration time against a probationary jail term rather than against the mandatory prison term.

D. *Gibbons v. Superior Court*, 163 AAR 18, 873 P.2d 700 (App. 1994). Statutory construction was used to clarify that the legislature intended to impose a four-month mandatory prison term on individuals convicted of DUI while license was suspended, canceled, revoked, refused or restricted.

Editor's note: Mr. Kula is in private practice in Phoenix after serving for five years as a Deputy Public Defender at our office. While at the Maricopa County Public Defender's Office, he conducted in-house DUI training and served as the DUI Editor for this newsletter. His private practice is limited to criminal defense with an emphasis on DUI cases. Ω

LEGAL UPDATE

by Max Bessler
Office of the Legal Defender in Maricopa County

Probation Revocation

State v. Baum, 189 Ariz. Adv. Rep. 5 (1995)

The defendant pled guilty to possession of marijuana for sale. Sentencing options ranged from probation to five years imprisonment. At sentencing, the trial court identified both aggravating and mitigating factors, stating that if the defendant were not granted probation, the likely prison term would be the minimum two years. The court found four years probation preferable to the two years imprisonment.

Months later, a petition to revoke probation was filed, alleging no fees payment. It was subsequently dismissed when the defendant became current on these payments. Later, a second petition was issued alleging the defendant had not fulfilled counseling, reporting, and payment requirements. The defendant's probation was reinstated with a warning that a further violation would result in a maximum prison sentence.

A third petition was filed. The defendant admitted the violations and offered circumstantial explanations. The court responded: "The Court has previously made findings relative to aggravating factors and mitigating factors. Further aggravating factors are that the defendant has not complied with the terms and conditions of his probation. The defendant has not taken this Court seriously in just about anything that the Court has ordered the defendant to do. The Court is particularly concerned about the fact that the defendant had to be arrested to be brought back before this Court and that he was, therefore, technically, on absconder status for a period of time. Weighing all these factors, Mr. Baum, you're going to find out that maybe you don't keep your word, but I do, sir. . .The Court finds no mitigating factors to weigh or mitigate against this defendant serving the full term."

The defendant appealed this sentence, questioning the validity of the trial court's imposition of a maximum aggravated sentence as a predetermined consequence of the probation violation. The court of appeals noted a judge may abuse his or her sentencing discretion by issuing a sentence that demonstrates "arbitrariness, capriciousness, or failure to conduct an adequate investigation into the facts relevant to sentencing." *State v. Blanton*, 173 Ariz. 517 (App. 1993). To conduct an adequate investigation, the judge must consider all pertinent mitigating and aggravating factors. *State v. Prentiss*, 163 Ariz. 81 (1990). In this matter, the court of appeals held the trial court failed to do so.

The court of appeals noted, following the second petition to revoke, the trial court expressed its intent to sentence the defendant to the maximum term whatever the nature of the next violation. When probation is revoked, the trial court "must impose a sentence because of the original offense; the sentencing court is without authority to impose punishment for violation of probation alone." *State v. Rowe*, 116 Ariz. 283 (1977). This does not preclude the probation failure from being considered as an aggravating factor. However, even serious criminal activity does not justify a sentence with "so tenuous a connection to the original charge" as to amount to punishment for the violation rather than the original offense. *State v. Herrera*, 121 Ariz. 12 (1978)

"Here the trial court made plain that it was basing its sentence on the violation, not the crime. . .the defendant proved to be a poor probationer, yet none of his probationary violations entailed illegal acts. The trial court, however, did not take this into account. Nor did it give mitigating weight to the fact that the defendant, by the time of sentencing, had avoided illegal behavior for a period of approximately eight years. Nor did the court consider any mitigating circumstances attendant upon the defendant's probationary violations. The court did not examine these matters and did not re-examine aggravating and mitigating factors associated with the defendant's underlying crime because the court adopted in advance a fixed sentence that precluded such consideration." Because the trial court failed to consider pertinent mitigating and aggravating circumstances, the sentence was vacated and remanded for a new sentencing hearing.

State v. Johnson, 187 Ariz. Adv. Rep. 32 (1995)

The defendant was granted five years probation on August 9, 1988. On August 6, 1993, his probation officer became aware that the defendant had been accused of committing a new crime. Conscious of the expiration date of the defendant's probation, the officer "walked" a petition to revoke probation and warrant request to the appropriate criminal division judge, who signed and dated it. A warrant for the defendant's arrest was issued that day. However, the paperwork was not forwarded to the Clerk's office until the next working day, August 9, 1993.

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Following the defendant's arrest, he argued the trial court had lost jurisdiction in the matter. He pointed out that his probation expired at midnight, August 9 and the court documents had not been filed with the Clerk's office until later that day, thus the court had no jurisdiction to hold him. The trial court dismissed this argument, in part relying upon Rule 5(h) which allows papers to be filed with the court. The defendant appealed, raising the question whether the paperwork had been "filed" within the meaning of A.R.S. § 13 - 903(D).

The court of appeals felt the judge's signature and date on the petition to revoke probation and his clerk's issuance of a warrant constituted "filing" with the judge as provided by Rule 5(h). The order revoking the defendant's probation and the sentence imposed were affirmed.

Juvenile

Maricopa County Juvenile Action No. JV-127231, 186 Ariz. Adv. Rep. 71 (1995)

At a transfer hearing, the juvenile judge denied the juvenile's request to cross-examine the probation officer who prepared the transfer report and who was present. The denial was based upon the conclusion the officer's testimony would not supplement the information contained in the report and that he was not qualified to comment on issues related to the Adobe Mountain School. The juvenile appealed.

Citing *Kent v. United States*, 383 U.S. 54, the court of appeals agreed that "due process and fundamental fairness require that the juvenile be afforded that opportunity (to question the author of the report)." *Cochise County Juvenile Delinquency Action No. DL 88-00037*, 164 Ariz. 417 (App. 1994); *Romley v. Superior Court*, 163 Ariz. 278 (App. 1989) and *Pima County Juvenile Action No. J-47735-1*, 26 Ariz App. 46 (1976) each allude to the existence of the right to question the probation officer regarding the transfer report. In this matter, the court of appeals held the juvenile judge's ruling was premature and an abuse of discretion. "We believe that all juveniles have a right to question the author of a transfer report that would lead a judge to conclude that there is 'no likelihood of reasonable rehabilitation of the juvenile.'" The case was reversed.

Maricopa County Juvenile Action No. JV-508801, 187 Ariz. Adv. Rep. 26 (1995)[1]

In response to three cases that involved juveniles having to submit blood samples to the Arizona DNA Identification System as a condition of probation, the court of appeals consolidated these matters into one decision. In each of these cases, the juvenile was adjudicated delinquent based upon allegations that he had molested another child. In none of the cases was the victim exposed to the juvenile's blood or bodily fluids. In each instance, the state had requested and the juvenile court ordered the juvenile to submit a blood sample for DNA registration as a condition of probation. In one instance, the court had noted the DNA prints would be destroyed or sealed upon the juvenile's 18th birthday.

The court of appeals, in a split decision, ruled the juvenile courts could not order DNA testing for juveniles. The court noted that the Arizona DNA Identification System was enacted through A.R.S. § 41-2418(A) and the offenders required to submit to DNA testing were outlined in A.R.S. § 13 - 4438. This latter statute identifies offenders convicted of sexual offenses as those who must be DNA tested. Since A.R.S. § 8 - 207(A) specifies that juvenile delinquents are not convicted of offenses, the court of appeals reasoned they could not be required to complete DNA testing. The court was careful to note that the juvenile courts have wide discretion in imposing conditions of probation, but in this case, the addition of DNA testing was an expansion of the criminal code. "Defining crimes and fixing penalties are legislative, not judicial functions." *State v. Wagstaff*, 164 Ariz. 485 (1990).

Judge Lankford dissented. He felt the outlined statutes did not preclude the juvenile court from requiring DNA testing as a condition of probation. "The fact that the legislature has not required testing does not mean that testing is prohibited. It is one thing to require a test; it is another to forbid the test. The legislature has not forbidden DNA testing of juveniles. On the contrary, the legislature has accorded the superior court broad powers regarding the disposition and treatment of juveniles." Citing A.R.S. § 8 - 241(A)(2)(b) in which the juvenile court may award a delinquent child "to a probation department, subject to such conditions as the court may impose", Judge Lankford reasoned the court "may" impose appropriate conditions without expanding the criminal code. Emphasizing the court's broad discretion, Judge Lankford cited *Maricopa County Juvenile Action No. JV-128676*, 177 Ariz. 352 (1994) in which the court of appeals held "(a) condition of probation which does not violate basic fundamental fights and bears a relationship

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to the purpose of probation will not be disturbed on appeal."

Search and Seizure

State v. Duran, 185 Ariz. Adv. Rep. 52 (1995)

The defendant was convicted of possession of marijuana for sale and sentenced to prison. On appeal, she contended the trial court erred by not suppressing evidence obtained from a search warrant based on a cordless telephone conversation. A police officer who lived nearby and was listening to a scanner radio intercepted a conversation in which the defendant talked about her drug sales. He then observed activities that corroborated his belief she was selling drugs and alerted the appropriate police agency who obtained a warrant to search her home.

Basing its decision upon *United States v. Smith*, 978 F.2d 171 (1992), the court of appeals held conversations on cordless telephones are not within the protected category because either the interception is of radio waves rather than actual utterances or the speaker has no reasonable expectation of privacy. The conviction and sentence were upheld.

Post-conviction Relief

Montgomery v. Sheldon, Judge, Superior Court in Maricopa County, 187 Ariz. Adv. Rep 3 (1995)

The Arizona Supreme Court was asked to determine: 1) if the court of appeals is required to search the record for fundamental error which would conflict with Rule 32.9 (c)(1)(ii); and 2) if such a search for fundamental error is required, does this then require mandatory review of all petitions. The Supreme Court noted that a guilty plea is guaranteed a right to appellate review. "Recent rule changes, however, do provide that a defendant pleading guilty waives any direct appeal. Ariz. R. Crim. P. 17.1. Presently, then appellate review for such a defendant is by Rule 32, a much narrower avenue. Thus, because a Rule 32 proceeding is the appeal for a defendant pleading guilty, A.R.S. §13-4035 requires the court of appeals to search for fundamental error." This conforms with Rule 32, which directs a petitioner to specify those issues the court is asked to review. However, nothing precludes the court of appeals from examining the record before it for fundamental error. "Searching for fundamental error is not a burdensome requirement." Nor does it require mandatory review under Rule 32. "We do not require the court of appeals to grant a defendant's petition for review before searching the record for fundamental error. . .the court of appeals. . .can summarily deny review of petitions that the trial court correctly denied and also look for fundamental error. . . The court of appeals is well able to look for fundamental error at the same time that it considers whether to accept the petition for further analysis. The court must simply state in any order denying review that it has examined the record and found no fundamental error. The court need not perfunctorily grant review and deny relief to search for fundamental error. Nor must it file a memorandum decision."

By adopting this procedure, the Supreme Court felt that it was expediting post-conviction proceedings while at the same time preserving constitutional protections. The rule eliminates direct appeals by pleading defendants and preserves the constitutionally guaranteed right of appellate review.

Justice Martone dissented. He stated that a review for fundamental error was incompatible with the rule and discretionary review. He questioned how the court of appeals can "summarily deny review and look for fundamental error at the same time."

Krone v. Hotham, Judge, Superior Court in Maricopa County, 185 Ariz. Adv. Rep. 13 (1995)

The defendant was convicted of first degree murder and sentenced to death. His conviction and sentence were automatically appealed to the Arizona Supreme Court. While his direct appeal was pending, the defendant filed a notice of post-conviction relief pursuant to Rule 32. The trial court dismissed the notice holding it was premature under Rule 32.4(a). In its ruling, the trial court held the rule precluded filing for post-conviction relief before his direct appeal was concluded.

The Supreme Court accepted the request for special action. It held "that Rule 32.4(a) does not preclude a defendant under sentence of death from filing a notice of post-conviction relief before his direct appeal is concluded." In holding such, the Supreme Court was aware "that our present practice may appear to conflict with the practice suggested by cases starting with *State v. Valdez*, 160 Ariz. 9 (1989). . . [h]owever, the practice of staying appeals pending resolution of Rule 32 proceedings has proven unsuccessful, and we will no longer engage in it, barring the most exceptional circumstances."

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State v. Jones, 189 Ariz. Adv. Rep. 49 (1995)

In a special action, the court of appeals held petitions for post-conviction relief in non-capital cases may be filed anytime prior to issuance of a mandate from the appellate court.

Victims' Rights

State v. Superior Court (Flores), 185 Ariz. Adv. Rep. 18 (1995)

Flores and Gongora were indicted for crimes arising from a drive-by shooting at J.M. the victim. J.M. was previously indicted on attempted murder and aggravated assault charges arising from different circumstances. The Maricopa County Attorney's Office was involved in prosecuting both cases. Gongora and Flores alleged the prosecutor had a conflict of interest in the prosecution of both cases and there was the appearance of impropriety. The trial court agreed and ordered the state to withdraw from one of the cases. The state filed for special action.

The defendants contended that although the victim did not seek the disqualification of the prosecutor, the defendants had standing because the victim's willingness to please the prosecutor could affect their own due process to a fair trial. They felt that since the adoption of victims' rights, "the prosecuting agencies have become quasi-representatives of alleged victims." The defendants alleged the prosecutor could not represent the victim in one matter and then prosecute him an another. They based their allegation of a conflict "on the prohibition against litigating adversely to a former client in a subsequent matter."

Relying upon *Hawkins v. Auto-Owners (Mut.) Ins. Co.*, 579 N.E.2d 118; *Lindsey v. State*, 725 P.2d 649; *State v. Eidson*, 701 S.W.2d 549; and *Rutledge v. State*, 267 S.E.2d 199, the court of appeals held "the prosecutor does not 'represent' the victim as a 'client' in a way that runs afoul of the Rules of Professional Conduct. . . (and) the facts of this case do not raise an 'appearance of impropriety' to any level sufficient to cause disqualification of the Maricopa County Attorney's Office from prosecution of either this case or prosecution of the victim in another case." The trial court's ruling was overturned.

Plea Agreements

State v. Johnson, 185 Ariz. Adv. Rep. 27 (1995)

The court of appeals held that "a court reviewing the extended record to determine the sufficiency of a factual basis for a defendant's plea may consider relevant evidence presented in the record of a codefendant."

Ineffective Assistance of Counsel

State v. Rosas, 186 Ariz. Adv. Rep. 22 (1995)

Following the defendant's plea and sentence to prison, he filed a petition for post-conviction relief alleging he would not have pleaded guilty if he had known he would be deported. The trial court rejected the petition of ineffective assistance of counsel. The court of appeals accepted review but denied relief. "We. . .decline to impose upon defense counsel a duty to inform non-citizen defendants about potential collateral deportation proceedings that may result from entering a guilty plea. Accordingly, we hold that failure of counsel to provide such information to defendant does not constitute ineffective assistance of counsel."

Death Penalty: Aggravating/Mitigating Factors

State v. Barreras, 186 Ariz. Adv. Rep. 40 (1995)

The defendant pleaded no contest to killing and sexually assaulting a mentally impaired 19-year-old woman. The trial court sentenced the defendant to death, finding the murder was committed in an especially heinous or depraved manner. The trial court relied upon the definitions in *State v. Gretzler*, 135 Ariz. 42 (1983) rather than those in *State v. Knapp*, 114 Ariz. 531 (1977). Under *Gretzler*, the Arizona Supreme Court considered five factors to determine if a murder was especially heinous or depraved: 1) relishing the murder, 2) inflicting gratuitous violence, 3) mutilating the victim, 4) the senselessness of the murder, and 5) the helplessness of the victim. The first three factors are given the most weight. In *State v. Ross*, 886 P.2d 1354, the Arizona Supreme Court also identified witness elimination as an additional factor.

In this matter, the trial court based its finding on the senselessness, helplessness, and witness elimination factors. The Supreme Court agreed with the senselessness of the crime and the helplessness of the victim. However, it could not find support for the

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witness elimination factor. If the murder were senseless, it could not have been committed to eliminate a witness, which seems to make sense. Moreover, witness elimination is applicable only if: 1) the victim witnessed another crime and was killed to prevent testimony about that crime, 2) a statement by the defendant or evidence of his state of mind shows witness elimination was a motive, or 3) some extraordinary circumstances show the murder was motivated by a desire to eliminate witnesses. *Ross*, 886 P.2d at 1362. In this case, the victim did not witness any other unrelated crime and the defendant did not say anything to show witness elimination was his motive.

"We are left with only the last two *Gretzler* factors -- senselessness and helplessness. As noted, we have held that in most cases the senselessness and helplessness factors alone will not support a finding of heinousness or depravity. *Ross* at 1362; *State v. Brewer*, 170 Ariz. 486. Although the question is close, we conclude here that they do not support a finding beyond a reasonable doubt that the murder was especially heinous or depraved within the meaning we have given these terms. *State v. Milke*, 177 Ariz. 118."

"The facts of this case tempt us to expand the meaning of heinous and depraved, but to do so on a case-by-case basis would institute a regime of ad hoc sentencing, destroying the definitional consistency that preserves the constitutional validity of our sentencing process. . .If we could expand the meaning of the (F)(6) factors' broad language to encompass the facts of each case on the basis of our intuitive conclusions as to the proper penalty, we would indeed have abandoned the struggle to provide a consistent narrowing definition and conceded that the factor is unconstitutionally vague. We must therefore set aside the trial judge's finding that the heinous or depraved aggravating circumstance applies."

Miscellaneous

Espinoza v. Martin, Judge, Superior Court in Maricopa County, 188 Ariz. Adv. Rep. 70 (1995)

Espinoza challenged the adopted policy of the quadrant B judges to accept no plea agreements that contained stipulated sentences. That policy permitted plea agreements that stipulated to probation or department of corrections, but precluded those that stipulated to any term of years or to any non-mandatory terms and conditions of probation, or to sentences running concurrently or consecutively, except for DOC time followed by lifetime probation in dangerous crimes against children. Judge Martin had summarily rejected Espinoza's plea agreement which stipulated his sentences would be served concurrently. Espinoza filed a special action with the court of appeals which denied relief, holding that the quadrant B policy was a proper exercise of judicial authority. Espinoza filed a petition for review. The Arizona Supreme Court accepted review.

Noting that rule 17.4 permits parties to negotiate and reach an agreement on any aspect of the disposition of the case, the Supreme Court felt that to "ensure that agreements negotiated pursuant to rule 17.4 have some meaningful effect, we interpret rule 17.4 as guaranteeing the parties the right to present their negotiated agreements to a judge, to have the judge consider the merits of that agreement in light of the circumstances of the case, and to have the judge exercise his or her discretion with regard to the agreement. . .Because the quadrant B policy simultaneously limits the content of plea agreements and precludes the exercise of judicial discretion over individual plea agreements, we hold that the policy violates rule 17.4." The Supreme Court went on to note that "the quadrant B policy violates rule 36, Arizona Rules of Criminal Procedure, because quadrant B adopted a rule that is inconsistent with the Arizona Rules of Criminal Procedure. Even if the quadrant B policy were consistent with the rule of procedure, the policy constituted a local rule that was invalid because quadrant B adopted it without first obtaining the approval of this court. This court has the exclusive power to make rules pertaining to all procedural matters in an Arizona court." The Supreme Court went on to take exception to Judge Martin's contention that the quadrant B policy was an "experiment". Even if it were an experiment, "the judges are still subject to the provisions of rule 36."

Justice Martone dissented, with Justice Zlaket dissenting in part. Justice Martone felt the policy conformed to rule 17.4 and was a creative way to improve the criminal justice system. He did not believe the Supreme Court has "been at the forefront of reform in the criminal justice system." Justice Zlaket felt the policy was an unapproved local rule, but felt judges "should be able to summarily reject (plea agreements) containing stipulated sentences for that reason alone, without having to go through the charade of considering each case individually."

State v. Mott, 189 Ariz. Adv. Rep. 35 (1995)

The defendant was convicted of child abuse and murder as a result of the death of her daughter at the hands of her boyfriend. During the trial, the court

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precluded a witness from providing testimony regarding the Battered Woman Syndrome. She appealed her conviction. The court of appeals was "persuaded that the preclusion of [the witness's] proffered battered woman syndrome evidence constituted a denial of due process, we reverse and remand for a new trial."

Reinesto v. O'Neil, Judge, Superior Court in Navajo County, 189 Ariz. Adv. Rep. 38 (1995)

In a special action, the court of appeals concluded that Arizona's child abuse statute does not apply to injury to fetus resulting from a mother's use of heroin during pregnancy.

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[1] A review of this finding has been requested of the Arizona Supreme Court. Ω

Editor's Note ~ ~
The following are corrected citations for Donna Elm's article "Resisting Arrest and Excessive Force Defenses" in last month's issue:

5. *Havier v. Partin*, 16 Ariz. App. 265, 267, 492 P.2d 761, 763 (1972).

15. *Walters* at 553-54, 748 P.2d at 782-83; *State v. Wallace*, 83 Ariz. 220, 223, 319 P.2d 529, 531 (1957); *State v. Plew*, 150 Ariz. 75, 77, 722 P.2d 243, 245 (1986).

16. *State v. Hunter*, 142 Ariz. 88, 688 P.2d 980 (1984); *State v. Martinez*, 122 Ariz. 596, 598, 596 P.2d 734, 736 (App. 1979).

April Trial Results

March 27

Jim Cleary: Client charged with misconduct with a weapon. Investigator N. Jones. Trial before Judge Ryan ended March 28. Defendant found guilty. Prosecutor Schroeder.

Gary Hochsprung: Client charged with sexual conduct with a minor. Investigator N. Jones. Trial before Judge Hertzberg ended April 5. Defendant found guilty. Prosecutor Amato.

March 28

Marie Farney: Client charged with aggravated assault (dangerous). Investigator R. Gissel. Trial before Judge Ryan ended April 3. Defendant found guilty. Prosecutor Blomo.

Lisa Gilels/Larry Grant: Client charged with murder. Investigator D. Erb. Trial before Judge O'Melia ended April 21. Defendant found **not guilty.** Prosecutor Berry.

Jerry Hernandez: Client charged with two counts of aggravated assault (dangerous). Trial before Judge Wilkinson ended April 4. Defendant found guilty of count one and guilty of count two, a misdemeanor. Prosecutor Schwartz.

April 3

Robert Ellig: Client charged with attempted sexual conduct with a minor. Trial before Judge Dougherty ended April 13. Defendant found guilty. Prosecutor Jorgenson.

Wesley Peterson: Client charged with aggravated DUI, BA .10 or greater, and endangerment. Trial before Judge Kaufman ended April 5. Defendant found **not guilty.** Prosecutor Gann.

April 4

Brian Bond/Troy Landry: Client charged with aggravated assault. Investigator B. Abernethy. Trial before Judge Hauser ended April 6. Defendant found **not guilty.** Prosecutor Kane.

Peg Green: Client charged with aggravated assault. Trial before Judge de Leon ended April 6. Defendant found **not guilty.** Prosecutor Brnovich.

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April 5

Rena Glitsos: Client charged with burglary and attempt to commit burglary. Investigator A. Velasquez and M. Fusselman. Trial before Judge Rogers ended April 10. Defendant found guilty on attempt to commit burglary and guilty of possession of burglary tools (admitted to two priors in exchange for dismissal on another cause). Prosecutor Campos.

April 6

Jim Likos: Client charged with aggravated DUI (with a prior). Trial before Judge Brown ended April 11. Defendant found guilty of lesser, driving on suspended license. Prosecutor Doran.

April 7

David Goldberg: Client charged with third degree burglary (with four priors and on parole). Trial before Judge Seidel ended April 19. Defendant found guilty (with a prior). Prosecutor Krabbe.

April 10

Bud Duncan: Client charged with trespassing. Investigator P. Kasieta. Trial before Judge Topf ended April 13. Defendant found guilty. Prosecutor Mason.

Jim Lachemann: Client charged with possession of marijuana (with two priors). Trial before Judge Bolton ended April 12. Defendant found guilty. Prosecutor Davis.

April 11

Louise Stark: Client charged with child abuse. Trial before Judge Mangum ended April 27. Defendant found guilty. Prosecutor Clarke.

April 12

Randall Reece: Client charged with multiple counts of sexual conduct with a minor and child abuse. Investigator R. Gissel. Trial before Judge Gerst ended April 21. **Judgment of acquittal** on three counts and **not guilty** on two counts; guilty on one count of sexual conduct with a minor. Prosecutor Garcia.

April 13

Gary Hochsprung: Client charged with second degree murder. Investigator N. Jones. Trial before Judge Hilliard ended April 26. Defendant found **not guilty** of second degree murder, guilty of reckless manslaughter. Prosecutor Ditsworth.

April 19

Jim Cleary: Client charged with armed robbery and kidnapping. Investigator C. Yarbrough. Trial before Judge Bolton ended May 2. Defendant found guilty. Prosecutor Palmer.

April 20

Jeff Van Norman: Client charged with aggravated DUI, BA .10 or greater. Trial before Judge Kaufman ended April 25. Defendant found guilty. Prosecutor Peters.

April 24

Timothy Agan: Client charged with aggravated assault. Investigator B. Abernethy. Trial before Judge Wilkinson ended April 26. Defendant found guilty, (non-dangerous offense). Prosecutor Cunanan.

Joe Stazzone: Client charged with aggravated assault. Investigator R. Barwick. Trial before Judge Ryan ended April 25. Defendant found **not guilty**. Prosecutor Harris.

April 25

John Movroydis: Client charged with attempt to commit armed robbery. Investigator J. Allard. Trial before Judge Topf ended May 2. Defendant found guilty. Prosecutor Kane.

Vonda Wilkins: Client charged with selling marijuana. Investigator T. Thomas. Bench trial before Judge Portley ended April 27. Defendant found **not guilty**. Prosecutor Sandler. Ω

Bulletin Board

Speakers Bureau

Helene Abrams served as a speaker at the State Bar's "Advanced Juvenile Delinquency: What Practitioners Need to Know in '95" seminar in Tucson in April. She also spoke in May to a Juvenile Justice class at Arizona State University.

Terry Bublik spoke about criminal defense work to a Justice Studies class at Phoenix College on April 26.

Personnel

New Attorneys:

On April 24, the following 13 attorneys started employment in our office:

John Blavatsky received his undergraduate degree in History and Political Science in 1985 from the University of Montana, his master's in International Affairs from Columbia University (New York) in 1988, and his J.D. from the University of Montana in 1993. While attending law school, Mr. Blavatsky served as a legal intern for the Montana Defender Project. He later worked in the Maricopa County Attorney's Office as a law clerk and in the Arizona Attorney General's Office as a legal assistant. Mr. Blavatsky is licensed to practice law in Arizona and Montana. He joins Trial Group A.

Kristen Curry obtained her B.A. in History from UCLA and her J.D. from the University of Arizona. Prior to coming to our office, Ms. Curry worked in the law office of Terrance Mead in Glendale, Arizona. She joins Trial Group A.

Amy Curtis was awarded a B.A. in Organizational Communication at Arizona State University in 1987 and her J.D. at Willamette University College of Law (Oregon) in 1994. Ms. Curtis served as a volunteer in our office during the summer of 1993 and as an extern in 1994. For the first part of this year, she served as General Counsel to the Oakcreek Funding Corporation. Ms. Curtis joins Trial Group B.

Nancy Hines received her B.S. from Finch College (New York) in 1975 and her J.D. from Western New England College School of Law (Massachusetts) in 1990. For the past four years she has been employed as Judge Cates's bailiff and law clerk. Prior to that she served as a Patient Advocate at the Disability Law Clinic, Northampton State Hospital, and as a Court Monitor for Belchertown State School for clients receiving anti-psychotic medication. Ms. Hines is admitted to the practice of law in Connecticut and Arizona. She joins Trial Group D.

Christine Israel earned her B.A. in Organizational Communication from Arizona State University in 1989 and her J.D. from the University of San Diego School of Law in 1993. While in law school, Ms. Israel was an intern at the Federal Defenders of San Diego. For the past year she has maintained a private, criminal practice in Scottsdale, Arizona. Prior to that she practiced in the Human Rights Office of DHS. Ms. Israel joins Trial Group C.

Karen Kaplan was granted a B.A. in Psychology (*summa cum laude*) from the State University of New York at Albany in 1990 and her J.D. from Arizona State University in 1993. While in law school she participated in intern/extern programs at the City Prosecutor's Office, the Attorney General's Office, and Commissioner Toby Gerst's Court. Since last fall she has practiced as Associate Attorney at Cohen, McGovern, Shroall & Stevens, P.C. Prior to that she served as bailiff to Judge McVey. Ms. Kaplan joins Trial Group D.

Kristin Larish received her B.A. in Political Science (*magna cum laude*) from Arizona State University (ASU) in 1990 and her J.D. from the ASU in 1993. While in law school, Ms. Larish served as a law clerk for the Arizona Capital Representation Project and the Federal Public Defender's Office, as well as spending one semester as the legal intern at Senator DeConcini's Office. Since January of 1994, Ms. Larish has served as Judge Hendrix's law clerk/bailiff. She joins Trial Group B.

James Leonard obtained his B.A. in History and Political Science (*cum laude*) from Park College (Missouri) in 1979 and his J.D. from Southwestern University School of Law (California) in 1990. Prior to entering law school, Mr. Leonard taught United States Government and History at Bishop Montgomery High School in Torrance, California, and was selected Teacher of the Year in 1984, 1985, 1986, and 1988. While in law school, he clerked for a Los Angeles Superior Court judge and for the Orange County District Attorney's Office. Since 1991, he has been in private practice (criminal defense) in Manhattan Beach. Mr. Leonard is admitted to practice law in California and Arizona. He joins Trial Group C.

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Vernon Lorenz, Jr. earned his B.A. in Theatre (*cum laude*) from Arizona State University in 1989 and his J.D. from Valparaiso University School of Law (Indiana) in 1994. While in law school Mr. Lorenz served as a law clerk at Chudom, Meyer & Germann in Indiana. From February to April of this year, he has practiced at Goldberg & Osborne in Phoenix. Mr. Lorenz joins Trial Group C.

Robert Reinhardt received his B.A. in Political Science in 1989 and his J.D. in 1992 from Arizona State University. While in law school, Mr. Reinhardt served an externship for Judge Armando de Leon and was a judicial law clerk for the Indian Law Clinic. Since 1993 he has been employed as a Deputy Legal Defender for the Mohave County Legal Defender. Mr. Reinhardt joins Trial Group D.

Christopher Trautman was awarded his B.A. in Political Studies at Pitzer College (California) in 1987 and his J.D. at Arizona State University in 1991. While in law school Mr. Trautman participated in externships at the Maricopa County Attorney's Office and the Arizona Board of Regents, and served as a law clerk at the Dial Corporation. Following graduation, he was a sole practitioner for a year (general criminal and civil practice) before joining the Mohave County Public Defender's Office in June of 1993. Mr. Trautman joins Trial Group C.

Ann Whitaker obtained her B.S. in Genetics from the University of California at Davis in 1986 and her J.D. at Arizona State University in 1992. While in law school she participated in externships with the United States Attorney, District of Arizona, and the Federal Public Defender, Phoenix. She also served as a law clerk for the Central Arizona Water Conservation District. Since 1993 she has practiced as a Deputy Public Defender for the La Paz County Public Defender. Ms. Whitaker joins Trial Group A.

Margot Wuebbels earned her B.A. in Psychology and History at Southern Methodist University (Texas) in 1990 and her J.D. (*cum laude*) at University of Arizona in 1994. While in law school Ms. Wuebbels participated in the student prosecutor program at the Office of the Tucson City Prosecutor. Before joining our office, she served as Assistant Counsel for the U.S. Senate Judiciary Committee, Subcommittee on Patents, Copyrights and Trademarks. Ms. Wuebbels joins Trial Group A.

New Support Staff:

Joan Lyons joined our appeals division as a legal secretary on May 22. Ms. Lyons has ten years' experience as co-owner/operator of a typesetting and graphics business, and she recently completed Phoenix College's legal secretarial program.

Lillian Pence joined Trial Group C as a legal secretary on May 22. Ms. Pence served for four years as a court clerk in the Yavapai County Justice Court. Prior to that she worked for eight years with Maricopa County Human Resources.

Linda Shaw started on May 22 as a legal secretary in Trial Group A. Ms. Shaw has five years' experience in a law office in Connecticut.

Moves:

Joyce Bowman, of ISS Durango, and **Yolanda Carrier**, of ISS Downtown, exchanged assignments on May 1.

Patricia O'Connor of Trial Group B moved to our Juvenile Division in Mesa on April 24.

Louise Stark of Trial Group A moved to our Appeals Division on May 15.

Anna Unterberger of Trial Group C moved to our Appeals Division on April 17.

Bob Ventrella of Trial Group D moved to our Juvenile Division at Durango on May 22.

Miscellaneous:

Margaret Corona graduated this month from ASU West with a B.S. in Justice Studies.

Armida Herrera, a sergeant in the Marine Reserves, recently received a military job promotion to Career Planner.

Jody Wilkins graduated in mid-May from Phoenix College with an associate's degree in legal secretary studies.

KEY NOTE:

Amy Bagdol in Administration is interested in collecting all "mystery" keys in the office. (Those are the keys that make you wonder why you have them and what use they are--for the desk, for the file, for what door?) If you have any unused keys on your key ring, in your desk or at the bottom of your briefcase, please give them to Amy. She will put them in her spare key box and find where they fit, as needed. Thanks. Ω

Computer Corner

This column is designed to provide simple computer tips helpful to people in the legal field. These tips are designed for WordPerfect 5.1 in DOS. If you have any suggestions that you would like to share, please contact Georgia Bohm at *for The Defense* (506-3045). If you have any problems or questions regarding the tips offered below, contact Ellen Hudak in Trial Group B (506-8331) or Georgia.

Macros

As we promised in last month's issue, we are going to tackle "macros"--an extremely useful way of streamlining your keystrokes. A macro is a mini-file that you create to represent a whole series of keystrokes. In other words, with a macro you can do in two strokes what otherwise may take you twenty strokes. Consider creating macros for tasks that you routinely perform in WordPerfect. For example, in two strokes you can view a document to check for format errors before printing it, to insert numbers on list, or to install a standard closing in a letter. You can tailor macros to fit your needs and style.

To create a macro,
hit (**Ctrl-F10**) for **Macro Define**.
At the bottom of your screen you will see the prompt "Define macro:"

*The name of your macro is what you want to type to call your macro into action. For frequently used macros, we recommend naming the macro a fast, two-stroke name, also called an Alt-letter macro. This means that you will name your macro "Alt" plus whatever letter you want to represent the function. To help you use macros, a letter that fits the function is best. For example, a numbering macro might be named "Alt-n" or the closing macro could be named "Alt-c." If you run out of single letters for Alt-letter macros and you want to create more macros, you may always use any name of one to eight letters, e.g., "memo" for your memorandum format and heading. To call the "memo" macro into action, you would type (**Alt-F10**), **memo**, and (**Enter**).*

Type the name of your macro and hit (**Enter**).
Next you will see "Description:" at the bottom of your screen.

This prompt is asking you to type a short description of what the macro does. This may be a life saver on an obscure macro that you do not use frequently and have forgotten what it is. For a numbering macro you may want to note: "automatic arabic numbering for lists."

Type your description (up to 39 characters), then hit (**Enter**).
Finally your screen will give you a blinking "Macro Def" prompt.
This is the time to type the keystrokes that you want recorded for this macro. Type them in the exact order that you will want them played back when you run the macro.
Hit "Macro Define" (**Ctrl-F10**) again when you are done recording your macro strokes.

Here's a small sample -- how to make a macro to show you a full-page view of your document to check for format errors before printing:

Hit (**Ctrl-F10**) for **Macro Define**.
At "Define macro" prompt, hit (**Alt**) and letter **v**.
At "Description" prompt, type "**view document**" and hit (**Enter**).
At "Macro Def" prompt, hit (**Shift-F7**),
then select the number **6** or letter **V** for "view document,"
hit (**Ctrl-F10**) to end the macro,
and hit (**F7**) to exit the "viewing" page sample.

Next time you want to look at the layout of your document to see if it is setting up nicely, hit (**Alt-v**) and your document will convert to the "view" mode. You should see a full-page shot of the page. If you are seeing an enlarged

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portion of the page, hit the number "3" to bring page to full size. (Numbers 1, 2, 3, and 4 give you varying sizes of the page in the "view" mode.) To exit the view, hit (**F7**). You will be back in your document, ready to correct any needed changes in the document before printing--a big resources saver! (As much as I view a document for formatting, this two-key stroke is a real time-saver--I hardly need to look at the keyboard to do it.)

Converting Footnotes to Endnotes

Here's an easy way to convert footnotes to endnotes--simply place your document in columns, then delete the column definition code. Your footnotes are instantly converted!

First, save your document by pressing **Save (F10)** and giving your document a name.
Hit (**Home**), (**Home**), (**Down Arrow**) and create a hard page by pressing (**Ctrl-Enter**). This is where your endnotes will be placed. You may want to title this page by typing *Endnotes*.
Hit (**Home**), (**Home**), (**Up Arrow**) to take you to the top of the document.

At the top of your document, define columns.
Hit **Columns/Table (Alt-F7)**, **(1) Columns, (3) Define**; it doesn't matter what type of columns you define.
Hit **Exit (F7)** and **(1) On**.
"Rewrite" the document into columns by hitting (**Ctrl-F3**) for **Screen**, and (3) for **Rewrite**.

Turn on **Reveal Codes (F11)**, move your cursor back to highlight **[Col Def: . . .]**, and **Delete** the column code.
Turn off **Reveal Codes** by hitting (**F11**) again.
To view your endnotes, hit **Print (Shift-F7)** and **(6) View Document** (*OR*, if you already created a "view document" macro, just hit (**Alt-v**) for a quick look). The endnotes appear on the last page of your document.

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Maricopa County Public Defender
Training Schedule

Date	Time	Title	Location
05/30/95- 06/16/95	8:30 - 5:00	New Attorney Training	MCPD Training Facility
06/09/95	1:30 - 5:00 p.m.	Attorney Training: *"Ethics of Client Relations"* with Cessie Alfonso, ACSW, of New Jersey and Panel Discussion (3 CLE Ethics hours)	Supervisors Auditorium